IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

WP(C).No. 6522 of 2006(B)

AGAINST THE ORDER IN E.P.91/2003 IN OS.287/2000 of MUNI-MAGI.COURT,THODUPUZHA

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PETITIONERS:

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1. **THOMAS, S/O.JOSEPH, KUNNELPURAYIDATHIL HOUSE, KUDAYATHOORKARA. VELIYAMATTOM VILLAGE, THODUPUZHA TALUK.**

2. **K.T.MARY, W/O.THOMAS, KUNNELPURAYIDATHIL HOUSE, KUDAYATHOOR KARA, VELIYAMATTOM VILLAGE, THODUPUZHA TALUK.**

BY ADV. SRI.T.C.MOHANDAS
SRI.T.M.SUNIL
SMT.S.CHITHRA
SRI.A.R.GANGADAS
SRI.A.S.BRIJESH

RESPONDENTS:

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1. **THOMAS, S/O.KUNJAPPAN, PULICKAL (MATTEL) HOUSE, KUDAYATHOORKARA, VELIYAMATTOM VILLAGE, THODUPUZHA TALUK.**

2. **MARIYAKUTTY, W/O.THOMAS, PULICKAL(MATTEL) HOUSE, KUDAYATHOORKARA, VELIYAMATTOM VILLAGE, THODUPUZHA TALUK.**

BY ADV. SRI.V.M.KURIAN for R1 & R2
SRI.A.V.THOMAS
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.6522/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE DECREE DTD. 28/10/2002 IN O.S.NO.287 OF 2000 OF THE MUNSIFF COURT, THODUPUZHA.**

EXT.P2: **COPY OF THE ORDER DTD. 4/03/2005 IN E.P.NO.19 OF 2004 OF THE MUNSIFF COURT, THODUPUZHA.**

EXT.P3: **COPY OF THE ORDER DTD. 4/03/2005 IN E.P.NO.91 OF 2003.**

EXT.P4: **COPY OF THE REPORT OF THE COMMISSIONER DTD. 21/03/2005 IN E.P.NO.91 OF 2003.**

EXT.P5: **COPY OF THE ORDER DTD. 31/03/2005 IN E.P.NO.91 OF 2003.**

EXT.P6: **COPY OF THE COMMON ORDER DTD. 6/10/2005 IN E.P.NO.91 OF 2003.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C) No.6522 OF 2006

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Dated this the 26th day of October 2007

JUDGMENT

This writ petition is preferred to set aside Ext.P6 order and for a direction to the court below to take up E.A.Nos.64 and 65 of 2005 in E.P.No.91 of 2003 in O.S.No.287/2000 on the file of the Munsiff's Court, Thodupuzha. A perusal of the records would reveal that the present writ petitioners had filed a suit, O.S.No.287/2000 against the respondents in the writ petition. The suit was decreed and a permanent prohibitory injunction from constructing a road through plaint A and B Schedule properties was granted. The counter claim filed by the defendants was also allowed and the plaintiffs in the suit were restrained by a decree of a prohibitory injunction from preventing the defendants to do the maintenance of plaint C schedule pathway for their enjoyment by making a stepping stone in the plaint schedule pathway. The disputed property in the suit is the pathway which is described as C Schedule as follows: Pathway through the southern portion of B Schedule property with a width of about 2 ft. and a length of about 50 metres originating from the PW.D. road and ending on the property of the

defendants. The execution petition was filed regarding the maintenance. A Commissioner was appointed. A report was filed and the said E.P. was closed by recording full satisfaction. To review that order, executions applications were filed.

2. Now the dispute between the parties confines to a narrow compass as follows: The grievance of the party is that under the guise of doing maintenance, the width of the pathway has been increased than what is shown in the decree schedule. Or, in other words, it is contended that the width of the present pathway in existence is more than 2 ft. and if it is done, it will operate against the terms of the decree. This factor had not been brought to the notice of the court or agitated before the court. When a decree is being implemented, it has to be implemented and it is the duty of the court to see that the width of the pathway is never more than 2 ft at any place for the entire length of 50 meters. If a deviation is done in that regard, it requires correction and it has to be restored to original position by finding the width of the pathway through out to a width of 2 ft and nothing more. Since this aspect of the matter has not been considered, I allow the review application and direct the court below to restore the execution petition to file and consider the matter afresh, i.e. to enter into a finding whether there is any change of width by doing act of maintenance and to confine the width

of the pathway to 2 ft at all points including the point of entry. For this purpose, if the very same Commissioner is available, he may be directed to inspect the property with due notice to the counsel for both sides, get a factual report and if necessary, permit parties to adduce evidence and dispose of the matter in accordance with law.

Parties are directed to appear before the court below on 29.11.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-